

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

21-cr-00118

BRANDON KIDDER,

Defendant.

MOTION TO ADJOURN RESTITUTION FILING

THE UNITED STATES OF AMERICA, by and through its attorney, Trini E. Ross, United States Attorney for the Western District of New York, CAITLIN M. HIGGINS, Assistant United States Attorney, of counsel, hereby requests, and for the reasons set forth in the attached declaration, an adjournment of the April 19, 2022 restitution filing deadline until May 16, 2022.

DATED: Buffalo, New York, April 18, 2022.

TRINI E. ROSS
United States Attorney

BY: /s/ Caitlin M. Higgins
CAITLIN M. HIGGINS
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

20-mj-01010

BRANDON KIDDER,

Defendant.

DECLARATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

CAITLIN M. HIGGINS, being duly sworn, deposes and states:

1. I am an Assistant United States Attorney for the Western District of New York assigned to the prosecution of the above-referenced case. This declaration is submitted in support of the government's motion for an adjournment of the April 19, 2022 restitution filing deadline until May 16, 2022.

2. On March 10, 2022, this Court sentenced the defendant to a term of 72-months imprisonment and 25-years supervised release. *See* Docket No. 76. The Court, however, held the question of restitution in abeyance. Specifically, the Court asked the government to promulgate a uniform practice with respect to handling restitution claims. The Court also requested that the parties file restitution papers on April 11, 2022. *See* Docket No. 76.

3. On April 11, 2022, at the parties' joint informal request, the Court adjourned the restitution filing until April 19, 2022. *See* Docket No. 80. At the time, the parties had agreed to a preliminary number with respect to restitution and planned to submit a joint submissions regarding same.

4. As the undersigned Assistant United States Attorney began preparing the joint submission, however, and conducting further research, the government began to question whether it could lawfully agree to a number below \$3,000 per victim in light of the explicit statutory language in 18 U.S.C. §2259. As such, the undersigned AUSA alerted defense counsel, who then requested an adjournment of the April 19, 2022 date until April 20, 2022. The government did not object to the request – and, in fact, now joins the request but seeks additional time until May 16, 2022.

5. Moreover, the undersigned AUSA has continued to speak with her supervisors regarding the issue. In addition, the undersigned AUSA reached out to fellow prosecutors across the country who handle child exploitation cases to determine how other districts handle the issue.

6. Furthermore, management has also reached out to the Department of Justice's Child Exploitation Section for additional guidance on this issue and the question of whether – even if the government cannot lawfully agree to a number below \$3,000 – if the defense can negotiate with victims' counsel regarding a restitution number.

7. This is all to say that, in attempting to comport with the Court's order to promulgate a uniform practice for addressing restitution in child pornography cases, the government is requesting additional time. The government intends to file an extensive briefing regarding the law on the issue and the restitution issues in this case. As such, the government requests that the restitution briefing be adjourned until May 16, 2022.

8. Pursuant to 18 U.S.C. § 3664, the Court has until June 8, 2022 to order to restitution in this case. The Court may, however, take additional time in ordering restitution as long as the Court makes clear on the record that it intends to exceed the 90-day deadline prior to that deadline. *See Dolan v. United States*, 560 U.S. 605, 611, 130 S. Ct. 2533, 2539 (2010).

9. Accordingly, the government requests that the Court grant its motion to adjourn the restitution filing deadline until May 16, 2022.

/s/ Caitlin M. Higgins
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